

PUBLIC NOTICE

M2004-07



**TN DEPT. OF ENVIRONMENT & CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
MINING SECTION
2700 MIDDLEBROOK PIKE SUITE 220
KNOXVILLE TN 37921**

ISSUE DATE 11/30/2004

EXPIRATION DATE 12/30/2004

TO WHOM IT MAY CONCERN: The applications described herein have been submitted for Aquatic Resource Alteration Permits pursuant to *The Tennessee Water Quality Control Act of 1977*, T.C.A. §69-3-108.

The purpose of this notice is to advise all concerned of the proposals for which permits are sought and to solicit comments and information necessary to evaluate the probable impact of the activities upon the respective water resources. The decision whether to issue or deny will in part be based upon that evaluation. All factors that may be relevant to the proposals will be considered.

Persons wishing to comment on or object to the issuance of a proposed permit are invited to submit comments in writing to the address listed above. Written statements received in this office on or before the date of expiration of the comment period, **December 30, 2004**, will become part of the record and will be considered in the determination. The public notice number, applicant's name, permit number and coordinator should be referenced.

Interested persons may also request in writing that the director of the Division hold a public hearing on any application. The request must be filed within the comment period and must indicate the interest of the person requesting it, and the reasons that the hearing is warranted. When there is sufficient public interest, the director shall hold a hearing in accordance with Rule 1200-4-1-.05(3)(G).

After consideration of comments submitted during the public comment period, the hearing record if any, and the requirements of federal and state law, the director of the Division will make determinations regarding the final action on each permit. Permit applications, supporting documentation and related comments are available for review and/or copying.

The public notice includes tentative determinations regarding the issuance, modification, denial or termination of permits for the activities proposed herein.

**DIVISION OF WATER POLLUTION CONTROL
MINING SECTION**

**WATER QUALITY PERMIT
AQUATIC RESOURCE ALTERATION**

PERMIT NUMBER #M2004-07

Permit Application Number: ARAP-#M2004-07

Applicant: Mr. Danny R. Chambers, President
Mountainside Coal Company
7692 South Highway 25W
Williamsburg, Kentucky 40769

Location: Unnamed tributaries to Tackett Creek in Campbell and Claiborne Counties near Eagan, Tennessee at 36°21'28" latitude, and 83°57'28" longitude on the Eagan, Tennessee USGS Quadrangle. The effected reaches are associated with Mountainside Coal Company, Eagan Mountain Surface Mine #2, SMCRA Permit #3141.

Background Information: Mountainside Coal Company is proposing to develop Eagan Mountain Surface Mine #2 in the Tackett Creek watershed. Proposed mining includes the elimination of the existing highwall and restoration of degraded stream reaches on the Jellico (Mason) and Blue Gem coal seams. The mining related activities proposed in the Mountainside Coal Company permit application would result in the alteration of wet weather conveyances, intermittent stream reaches, and associated wetlands on mine benches that predate the *Surface Mining and Reclamation Control Act of 1977*. As Eagan Mountain Surface Mine #2 is reclaimed the drainages altered by this pre-law mining in the affected watersheds are to be reconstructed and restored. Some drainages that are wet weather conveyances above the Blue Gem coal seam will be temporarily eliminated during mining and then reestablished post-mining. The alteration and mitigation of these drainages are to follow the *Stream Mitigation Guidelines for the State of Tennessee*. Mine pits existing prior to the implementation of the *Surface Mining and Reclamation Control Act of 1977* that have developed wetland characteristics will be eliminated. Mountainside Coal Company proposes converting sediment basins to wetlands that are hydraulically connected to the reconstructed stream channels as mitigation for the eliminated mine pits with wetland characteristics.

During June 3, 2004 pre-mine investigations Mining Section personnel identified stream reaches that were at least intermittent, wet weather conveyances and wetlands. The existing stream reaches have been encroached on and altered by activities associated with coal mining prior to the implementation of the *Surface Mining and Reclamation Control Act of 1977*, and other natural resource developments such as logging. These upper watershed drainages that will be affected by the proposed activities have been mined

through. These existing sources contribute to sedimentation of intermittent and perennial waters downstream.

The Division's review of the permit applications determined that the scope of the project is such that the proposed activities are not covered under a general permit.

Project Description ARAP-#M2004-07: Mountainside Coal Company has applied for an Individual Aquatic Resource Alteration permit for alteration and restoration type activities in approximately 7136 linear feet of wet weather conveyances and intermittent tributaries in the Tackett Creek watershed.

- The permit application indicates approximately 7136 linear feet of intermittent stream and wet weather conveyance is to be altered by mining related activities. These stream reaches have been impacted by mining related activities prior to the implementation of the *Surface Mining and Reclamation Control Act of 1977*.
- Approximately 3963 feet of stream will be replaced at a mitigation ratio of 1:1. Approximately 3173 feet of stream will be restored and enhanced at a mitigation ratio of 2:1 for 1586 feet of additional alteration I type activities.
- Sediment basins are to be developed as approximately 7 acres of wetland habitat post-mining that is hydraulically connected to the reconstructed stream channels.
- Diversion channels are to be constructed above mining drainage routing clean water away from active mining areas and through rock-lined drains 1, 2, and 3. This prevents commingling with treated mine wastewater.
- The ARAP stream channels will be reconstructed on the reclaimed contours to emulate to the extent practicable the drainage patterns prior to coal mining in the watershed based on the USGS quadrangle. Reconstruction and enhancements to stream reaches will follow a generalized template. Variations from the generalized template may occur due to specific site conditions and material availability.
- Rock-lined channels (RLD 1, 3, and 13) will be developed as intermittent streams downstream of the Blue Gem coal seam. The remaining rock-lined channels are to be developed as wet weather conveyances. These rock-lined channels are conservatively designed for a modeled 100-year, 6-hour precipitation event to meet SMCRA permit conditions. The applicant is proposing riparian enhancements for these stream channels. These drainages are to be connected to the upstream hydrology and converted wetlands to facilitate the reestablishment of intermittent streams post-mining.
- On completion of channel construction and achievement of final grade the area will be revegetated with an appropriate seed mix. Fifty-foot wide riparian zones will be established for the stream channels developed from the rock-lined drains. The riparian areas will also be planted with endemic tree and shrub species at a rate of approximately 400 trees per acre.

Tentative Determination: The Division proposes to issue a conditional permit.

Permit Coordinator: Dave Turner
Mining Section
Division of Water Pollution Control
2700 Middlebrook Pike
Suite 220
Knoxville, TN 37921

Aquatic Resource Alteration Permit Conditions

1. The work shall be accomplished in conformance with the approved plans, specifications, data and other information submitted in support of the above application and the limitations, requirements and conditions set forth herein.
2. The proposed work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 1200-4-3-.03 of the Rules of the Tennessee Department of Environment and Conservation. This includes but is not limited to the prevention of any discharge that causes a condition in which visible solids, bottom deposits or turbidity impairs the usefulness of waters of the state for any of the uses designated by Rule 1200-4-4. These uses include fish and aquatic life, livestock watering and wildlife, recreation and irrigation.
3. Activities that result in the alteration to "waters of the state" other than the reaches specified in the approved plans and permit require prior authorization under a separate aquatic resource alteration permit.
4. A copy of the permit and approved plans must be kept on site during all construction phases of the activity covered.
5. Drainage and erosion controls must be in place prior to commencing construction activities.
6. Reconstructed stream reaches and discharge channels to the ARAP areas must be lined with appropriate geotextile fabric in areas where the channel is in unconsolidated or spoil material.
7. Within 30 days of beginning mining related activities Mountainside Coal Company must provide the Division with the proposed cut sequence and the sequence of construction for the proposed ARAP activities. The ARAP areas that are immediately upslope or downslope of areas to be actively mined must be stabilized and channel substrate enhancements in place prior to mining within the sub-watershed.

8. Reconstruction of the ARAP stream channels in the areas mined is to commence on the completion of each cut sequence contemporaneous with reclamation.
9. Rock-lined channels will convey water through the mine area without passing through treatment basins. These channels are designated RLD 1, 2, and 3 on the plan and prevent the commingling of water from the upslope diversions from mine wastewater. These rock-lined channels must extend through the Eagan Mountain Surface Mine #2 mine areas to geomorphically stable channels.
10. Rock-lined channels 4 thru 14 flow through treatment basins. The basin spillways must be extended as rock lined channels to geomorphically stable channels below the Blue Gem coal seam elevation.
11. The backfill underdrains should be developed to supplement the hydrology in the reconstructed stream channels. As these structures are constructed hydraulic connections to the reconstructed stream channel must be established and indicated on an as-built plan.
12. To evaluate the conformance of each ARAP reach to the approved plans, Mountainside Coal Company must provide an as-built plan of each stream reach to the Division within thirty days after the completion of construction activities in that reach.
13. Riparian buffers on either side of the stream channel must be established as detailed in the plans. Buffer areas without established vegetation must be planted with endemic shrub and tree species. No species should compromise more than one-third of the total planted trees and shrubs in the riparian buffer zones. The planting rate is a minimum of 400 stems per acre. Planting survivorship of 300 stems per acre must be attained during the five-year monitoring period.
14. Undisturbed areas within the riparian buffer zones may not require additional planting. This is subject to Division approval and Mountainside Coal Company must demonstrate that tree and shrub species are established in these zones and that they have not been disturbed by activities related to Eagan Mountain Surface Mine #2.
15. A written agreement must be obtained from the landowners that precludes surface disturbance such as mining and harvesting of timber in the fifty-foot buffer zones for a minimum of twenty-five years with selective harvesting only in these zones thereafter. A copy of this agreement must be provided to the Division. This will assist in assuring the long-term stability of the reconstructed stream reaches.

16. Level III monitoring requirements must be implemented for ARAP-#M2004-07. The first two of the following items have been completed and submitted to the Division in this application:
 - Narrative description and photos of pre-project conditions
 - Pre-project habitat assessment
 - Annual narrative description and photos
 - Annual riparian vegetation survey
 - Annual channel morphology survey
 - Post-project habitat assessment at the end of the required monitoring period
17. Mountainside Coal Company must have the converted wetlands delineated. A copy of the delineation report must be provided to the Division at least one-year prior to the conclusion of the five-year monitoring period.
18. A comprehensive post-project report must be submitted to the Division at the conclusion of the five-year monitoring period. This report must demonstrate that the ARAP channel, riparian buffer zones, and constructed wetlands have met permit conditions.
19. On successful completion of the ARAP the Division will issue a letter of finding that the conditions of the permit have been fulfilled indicating that no further action is required.

State of Tennessee Antidegradation Policy

Tennessee's Antidegradation Statement is found in Chapter *1200-4-3-.06* of the *Rules of the Tennessee Department of Environment and Conservation*. The primary purpose of the antidegradation policy is to establish a greater level of protection for those waters that are identified to be of high quality. Some high-quality waters are in near-pristine condition. Others are determined to be high quality due to specialized uses and/or unique features.

Generally, there are two types of high-quality waters. Outstanding National Resource Waters (ONRWs), or Tier 3 waters, are specifically designated by the Water Quality Control Board and are afforded the greatest level of protection. No new discharges or expansion of existing discharges are allowed to result in degradation of the existing water quality.

Other high-quality waters are identified by the Department as Tier 2 waters and are also protected against degradation. Some degradation may be allowed only if the Water Quality Control Board deems it economically and socially necessary. Other surface waters not specifically identified and/or designated as high quality are referred to as Tier 1 waters. Tennessee's Water Quality Standards must be achieved and/or maintained in these waters.

This permit does not obviate requirements of other federal, state or local laws.

The State of Tennessee reserves the right to modify or revoke this permit or to seek modification or revocation should the State determine that the activity results in more than an insignificant violation of applicable water quality criteria or violation of the Act. Failure to comply with permit terms may result in penalty in accordance with § 69-3-115 of the Act.

An appeal of this action may be made to the Water Quality Control Board. In order to appeal, a petition requesting a hearing before the Board must be filed within thirty days after receipt of the permit action. In such petition, each contention should be stated in numbered paragraphs, which describe how the proposed activity would be lawful and the action of the state is inappropriate. The petition must be prepared on 8½" by 11" paper, addressed to the Water Quality Control Board and filed in duplicate at the following address: Paul E. Davis, Director, Division of Water Pollution Control, 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Any hearing would be in accordance with T.C.A. §69-3-110 and 4-5-301 et. seq. Questions concerning this certification should be addressed to Dave Turner at 865-594-5541 or Dan Murray at 865-594-5549.

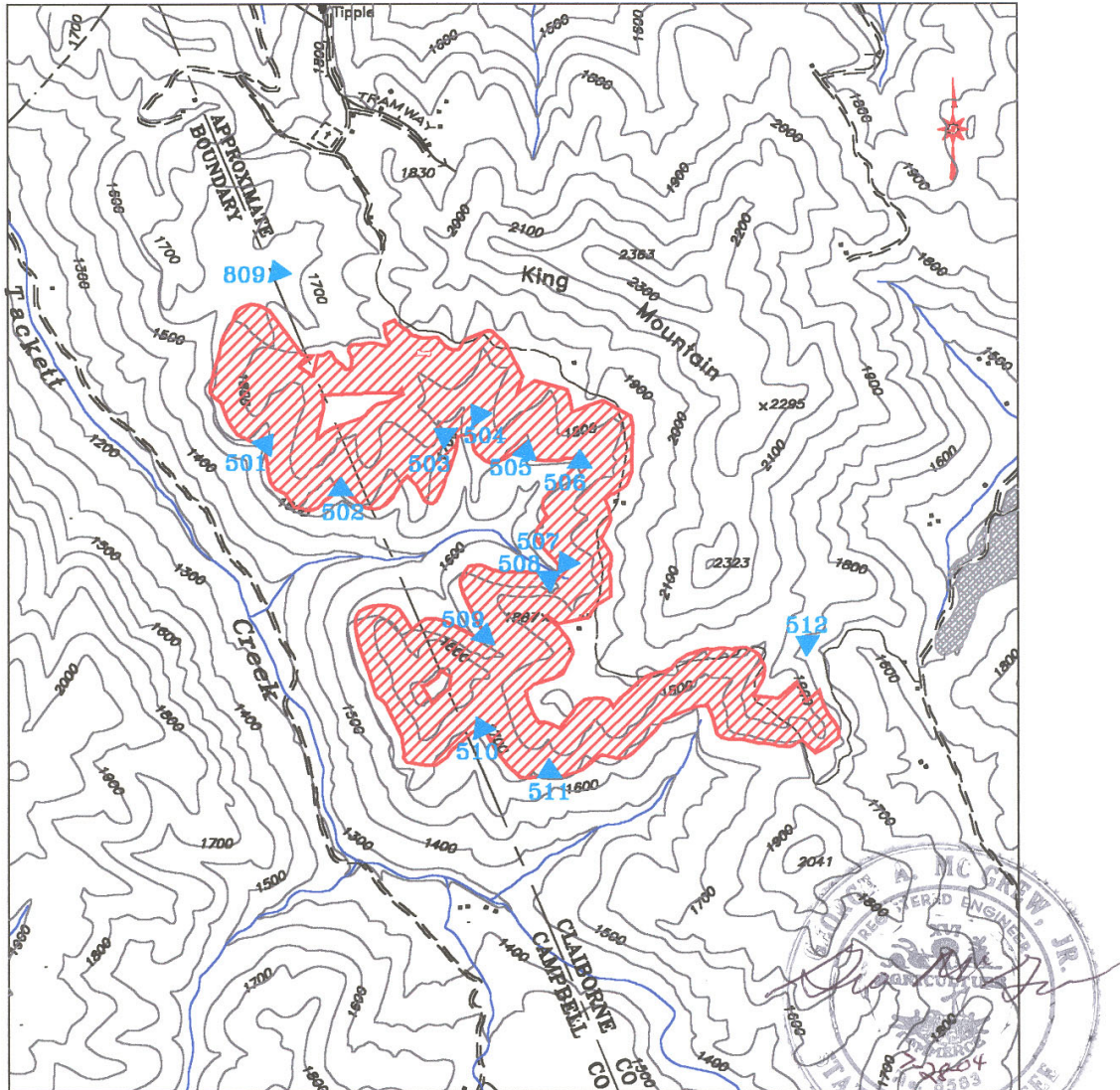
Paul E. Davis, Director
Division of Water Pollution Control

Date

Mountainside Coal Company, Eagan Mountain Surface Mine #2

November 30, 2004

Page 8 of 8



TITLE: Location Map
AREA #: Eagan Mountain Surface Mine #2
SURFACE & MINERAL RIGHTS:
Ataya Hardwoods, LLC & WPP, LLC
ACREAGE: 336.8
COUNTY: Claiborne
Quadrangle: Eagan, Tn (4257 III SW)
LATITUDE: 36° 21' 28"
LONGITUDE: 83° 57' 34"
DATE: 04/14/2004

LEGEND:
— Permit Area
▲ Sediment Basin

SCALE:
0' 1,000' 2,000' 3,000'

Prepared by:
Mark V Mining and Engineering, Inc.
353 North Cullom Street
Clinton, Tennessee 37716
(865) 457-1664

Prepared for:
Mountainside Coal Company
7692 South Highway 25W
Williamsburg, KY 40769

Permit Application M2004-07
Mountainside Coal Company
Eagan Mountain 2 Surface Mine
Site Location Map